

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.697 OF 2021
IN
CRIMINAL APPEAL NO.587 OF 2021**

Sunil Karbhari Jadhav	..	Applicant
v/s.		
The State of Maharashtra	..	Respondent

....

Mr. Vaibhav D. Kadam a/w. Mrunal Joshi & Kanchan Zire for the Applicant.

Mrs. M. M. Deshmukh, APP for the Respondent.

....

**CORAM: NITIN JAMDAR &
C. V. BHADANG, JJ.**

DATE : 30 September 2021.

P. C:-

By this application, the Applicant is seeking suspension of sentence and to be released on bail during the pendency of the Appeal. The Appeal filed by the Appellant challenging the judgment and order dated 30 January 2019 passed by the learned Sessions Judge at Niphad convicting the Applicant for the offence under Sections 302 and 506 of the Indian Penal Code and sentencing the Applicant to suffer RI for life is already admitted.

2. The Applicant was married to the deceased Savita eleven

years prior to the incident. According to the prosecution, the Applicant and the deceased used to quarrel as the Applicant used to suspect the character of the deceased and used to abuse her. On 5 August 2016 at around 9.00 p.m. the Applicant after taking suspicion on deceased Savita, poured kerosene on her and set her on fire. Son of the Applicant and the deceased, aged about 7 years was present and when he started to cry the Applicant threatened him. Thereafter the Applicant went outside the house locking the door and the son of the deceased found his mother lying in burnt condition in the bathroom. She informed him to call his grandfather. Upon making a call grandfather arrived and shifted the deceased to the hospital. The deceased gave a dying declaration (Exhibit 19) which was recorded by PW-3-Pallavi Ligade, Special Executive Magistrate and the Medical Officer PW-6-Dr. Rohini Sapkal examined the deceased. Based on this and other evidence, the learned Sessions Judge convicted the Applicant.

3. The learned Counsel for the Applicant submitted that the evidence of PW-1-Sahil, child witness is not trustworthy as he has been tutored by the grandfather. The learned Counsel for the Applicant submitted that it is not believable that nobody will come to the rescue of the deceased and there is an anomaly in the evidence of PW-1. The learned Counsel also submitted that the father of deceased PW-2-Kadu Ubale has arrived next day though the distance between the village where he resides and the spot of incident is not very far. The

learned Counsel also submitted that when the statement was recorded by the Investigating Officer PW-5-Dagu Barhathe, the mother of deceased was present. He also submitted that having received 89% burns it is not possible that the deceased will give a clear lengthy dying declaration. In support of this the decision of *Chacko vs. State of Kerala*¹ is relied upon. The learned APP opposed the Application contending that the evidence of child witness and the dying declaration cannot be disbelieved at this stage.

4. PW-1-Sahil child witness is clear in his deposition. He has explained as to why the grandfather arrived the next day as he has stated that mother was lying in burn condition in the bathroom and when she asked him to make a phone call he made a phone call to the grandfather. Because he was in custody of his grandparents, his statement made as per narration of grandfather cannot be said to be tutored one as nothing is shown as to why the child will implicate his father. It cannot also be concluded at this stage that instructions were given by the grandfather to narrate the statement in such a way to implicate the Applicant. As regard the dying declaration both PW-3-Pallavi Ligade and PW-6-Dr. Rohini Sapkal have deposed that the deceased was in fit and conscious condition to give statement and endorsement to that effect is also placed on the dying declaration. Unlike case before the Apex Court in the decision of *Chacko (supra)*, the dying declaration in the present case is in few lines and in question

¹ (2003) 1 Supreme Court Cases 112

answer form. Even otherwise the deceased Savita did not expire immediately after giving the statement so as to take doubt on her medical and mental condition.

5. Considering these facts it is not possible to disbelieve the prosecution evidence at this stage. The Applicant was not on bail during the trial. Accordingly, the application stands rejected.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)

RAJESHWARI
SUBODH
KARVE

Digitally signed
by
RAJESHWARI
SUBODH
KARVE
Date:
2021.10.01
12:09:04 +0530